



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812344-2165-01]

RIN 0648-AY74

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;

Snapper-Grouper Fishery Off the Southern Atlantic States;

Amendment 20A

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 20A (Amendment 20A) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this rule would revise the wreckfish individual transferable quota (ITQ) program, by defining and reverting inactive wreckfish quota shares, redistributing reverted quota shares to remaining shareholders, establishing a cap on the number of wreckfish quota shares a single entity may own, and establishing an appeals process for redistribution of reverted wreckfish quota shares. The intent of this rule is to

help achieve the optimum yield (OY) from the wreckfish commercial sector in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the amendment identified by "NOAA-NMFS-2011-0277" by any of the following methods:

- Electronic submissions: Submit electronic comments via the Federal e-Rulemaking Portal:  
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment", then enter "NOAA-NMFS-2011-0277" in the keyword search and click on

"search". To view posted comments during the comment period, enter "NOAA-NMFS-2011-0277" in the keyword search and click on "search". NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of Amendment 20A may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by e-mail at [OIRASubmission@omb.eop.gov](mailto:OIRASubmission@omb.eop.gov), or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727-824-5305, or e-mail: [nikhil.mehta@noaa.gov](mailto:nikhil.mehta@noaa.gov).

SUPPLEMENTARY INFORMATION:

Wreckfish is part of the snapper-grouper fishery and is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the

authority of the Magnuson-Stevens Act.

## Background

The wreckfish commercial sector has been managed under an ITQ program since March 1992, through Amendment 5 to the FMP, in order to end derby fishing (race to fish) practices. Currently, latent effort exists in the wreckfish commercial sector with very few active participants. In August 2010, the Council's Scientific and Statistical Committee (SSC) recommended an acceptable biological catch (ABC) for wreckfish off the southern Atlantic states of 250,000 lb (113,389 kg), round weight. The proposed rule for the South Atlantic Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment), which published on December 1, 2011 (76 FR 74757), proposed an ACL of 250,000 lb (113,389 kg), round weight for wreckfish. However, in November 2011, the Council's SSC recommended a revised wreckfish ABC equal to 235,000 lb (106,594 kg), round weight, and the Council approved revising the ACL to reflect the lower ABC at its December meeting. Thus, NMFS published an amended proposed rule for the Comprehensive ACL Amendment on December 30, 2011 (76 FR 82264), to propose the ACL of 235,000 lb (106,594 kg), round weight. The Comprehensive ACL Amendment was approved on January 18, 2012, and the final rule for the Comprehensive ACL Amendment will allocate 95 percent of the wreckfish ACL to the commercial

sector, which represents a commercial ACL of 223,250 lb (101,264 kg), round weight. The commercial ACL would be an 89-percent reduction from the current total allowable catch for wreckfish of 2 million lb (907,185 kg), round weight. The purpose of Amendment 20A is to identify and revert inactive wreckfish shares for redistribution among remaining shareholders and establish a share cap and an appeals process. The intent of this amendment is to achieve OY in the wreckfish commercial sector while maximizing harvest potential and not exceeding the ACL.

#### Management Measures Contained in this Proposed Rule

##### Define and Revert Inactive Wreckfish Quota Shares

The ACL for the wreckfish commercial sector in the Comprehensive ACL Amendment and in the amended proposed rule, will result in a significant reduction in the amount of available harvest associated with each wreckfish quota share, including inactive wreckfish quota shares, in order to maintain harvest at or below the ACL. If inactive wreckfish quota shares are not reverted and redistributed to active wreckfish quota shareholders, harvest would likely only be approximately 130,735 - 160,338 lb (59,300 - 72,728 kg), round weight, after applying the new ACL. As of November 17, 2011, there were 20 shareholders in the wreckfish commercial sector of the snapper-

grouper fishery. Out of those 20 wreckfish shareholders, 13 inactive wreckfish quota shareholders held a combined 28.18 percent of wreckfish quota shares. Amendment 20A defines inactive shares as those shares held by ITQ shareholders who did not report any wreckfish landings between April 16, 2006, and January 14, 2011. This rule, if implemented, would revert these inactive wreckfish quota shares and redistribute them among the seven remaining active wreckfish quota shareholders.

#### Redistribute Reverted Wreckfish Quota Shares

This rule, if implemented, would redistribute the above mentioned wreckfish quota shares to remaining wreckfish quota shareholders based on landings history from fishing years 2006/2007 through 2010/2011. The percentage of individual wreckfish quota shares redistributed to the remaining wreckfish quota shareholders would range from 0.04 percent to 9.91 percent, depending on the remaining wreckfish quota shareholder's landings history.

#### Establish a Share Cap

This rule, if implemented, would establish a share ownership cap of 49 percent of the total wreckfish quota shares. This would prevent any one entity from holding the majority of wreckfish quota shares. NMFS would determine a corporation's total ITQ share, which would not exceed the 49 percent share

cap, by adding the corporation's ITQ shares to any other ITQ shares the corporation owns in another corporation. If an individual ITQ shareholder is also a shareholder in a corporation that holds ITQ shares, the applicable ITQ shares held by the individual is added to the applicable ITQ shares equivalent to the corporate share the individual holds in a corporation. A corporation must provide the Regional Administrator (RA) the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for wreckfish is renewed or transferred.

#### Establish an Appeals Process

Five percent of the wreckfish quota shares for the 2012/2013 fishing year would be set-aside if Amendment 20A is approved, to resolve any appeals, for a period of 90 days starting on the effective date of the final rule. The RA would review, evaluate, and provide final decisions on appeals. Hardship arguments would not be considered. The only items subject to appeal are the status of wreckfish quota shares, as active or inactive and the accuracy of the amount of landings. The RA would determine the outcome of appeals based on NMFS'

logbooks. If NMFS' logbooks are not available, the RA could use state landings records. Appellants would submit NMFS logbooks, or state landings records if appropriate, to support their appeal. Any portion of the 5-percent share remaining after the appeals process is completed will be distributed as soon as possible among the remaining shareholders, based on each shareholder's wreckfish landings reported between April 16, 2006, and January 14, 2011.

#### Availability of Amendment 20A

Additional background and rationale for the measures previously discussed are contained in Amendment 20A. The availability of Amendment 20A was announced in the Federal Register on January 12, 2012 (77 FR 1908). Written comments on Amendment 20A must be received by March 12, 2012. All comments received on the amendment or the proposed rule during their respective comment periods will be addressed in the preamble to the final rule, if the Amendment is approved.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 20A, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

This rule, if implemented, would define and revert inactive shares of wreckfish quota, redistribute any reverted shares to active shareholders, establish a share cap, and establish an appeals process. The objectives of this rule are to achieve OY in the commercial wreckfish sector of the South Atlantic snapper-grouper fishery in accordance with National Standard 1 of the Magnuson-Stevens Act, which will in turn result in a more efficient use of the species in accordance with National Standard 5 of the Magnuson-Stevens Act. Establishment of a share cap is necessary to comply with requirements for limited access privilege programs under Section 303A of the Magnuson-Stevens Act. The management measures contained in this rule are described in the preamble and are not repeated here.

This rule is expected to directly affect shareholders that possess quota shares in the wreckfish commercial sector of the

snapper-grouper fishery. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide.

As of November 17, 2011, 20 entities held shares in the wreckfish commercial sector of the snapper-grouper fishery. The minimum quota share held by a shareholder was 0.06 percent. The maximum quota share was 20.63 percent. The average quota share was approximately 5 percent. With respect to the distribution of shares, as of November 17, 2011, 13 shareholders owned less than 5 percent, 4 shareholders owned between 5 percent and 10 percent, 2 shareholders owned between 10 percent and 15 percent, and 1 shareholder owned more than 20 percent of the quota shares. Given that the current market value of a 1 percent share is \$6,407, the minimum market value of a shareholder's quota shares is \$384, the maximum market value of a shareholder's quota shares is approximately \$132,176, while the average market value of a shareholder's quota shares is approximately \$32,035.

Based on landings data from the 5 most recent fishing years (i.e., 2006/2007 to 2010/2011), 13 of the 20 shareholders had no wreckfish commercial landings during this time. Further, 11 of the 13 inactive shareholders were not commercially active in any fisheries, and thus earned no gross revenue or profit from commercial fishing activities, between 2006 and 2010. The other two inactive shareholders commercially harvested species other than wreckfish during this time. The extent to which these two shareholders were involved in other commercial harvesting activities differs greatly, as one was only minimally involved and the other significantly involved in such activities. Specific information regarding their landings and gross revenue is confidential, while information regarding their profits is currently not available.

Seven of the 20 shareholders had at least 1 lb (0.45 kg) of wreckfish commercial landings during the 5 most recent fishing years. More specifically, these shareholders' annual wreckfish landings and gross revenue were 32,804 lb (14,880 kg) and \$82,085 on average during this time, respectively. On average, these shareholders also earned \$90,582 in annual gross revenue from other species during this time. Thus, annual gross revenue from commercial fishing was \$172,668 per shareholder on average during the 5 most recent fishing years. Information regarding

these shareholders' profits is not currently available. The maximum gross revenue earned by a single shareholder in any of the 5 most recent fishing years was \$484,372. Based on these figures, all 20 shareholders that are expected to be directly affected by this rule are treated as small business entities for the purpose of this analysis.

The rule would define 28.18 percent of the quota shares as inactive and would revert them for redistribution to shareholders determined to be active. By definition, the 13 inactive shareholders possessing these quota shares would not incur any losses in wreckfish landings or gross revenue. Eleven of these inactive shareholders had no commercial landings of any species between 2006 and 2010 and, thus, have no gross revenue or profits from commercial fishing. As such, this action would not reduce their profits from commercial fishing. The other two inactive shareholders did have commercial landings and gross revenue of other species during 2006 and 2010. Because all of their landings, gross revenue, and thus profit come from the commercial harvest of species other than wreckfish, NMFS does not expect the loss of wreckfish shares to affect the current operations of these two shareholders' vessels. However, they would no longer have the option of fishing for wreckfish in the future. The loss of shares would also prevent the inactive

shareholders from leasing their annual allocation of wreckfish coupons. However, as no coupons have been leased by any shareholder since 1995, no loss in profits is expected. NMFS estimates the value of the loss of quota share to these 13 inactive shareholders to be approximately \$180,600, or about \$13,890 per shareholder. However, these losses represent a loss in asset value or wealth rather than a loss in profits.

If implemented, this rule would redistribute reverted shares to the 7 active shareholders in the wreckfish segment of the snapper-grouper fishery, who would see an increase in shares by 0.04 percent, 0.06 percent, 1.43 percent, 2.37 percent, 5.07 percent, 9.3 percent, and 9.9 percent, respectively. After the redistribution, the final distribution of total wreckfish shares across the 7 active shareholders would be 3.55 percent, 9.05 percent, 11.24 percent, 11.62 percent, 18.38 percent, 23 percent, and 23.16 percent, respectively. Because the proposed action would distribute reverted shares proportionate to current share holdings, the distribution of reverted shares will be unequal. All active shareholders would, nevertheless receive redistributed shares and associated economic benefits. With respect to short-term economic benefits, the increase in annual allocation for each active shareholder ranges from 86 lb (39 kg) to 22,114 lb (10,052 kg), or approximately 8,986 lb (4,085 kg)

on average. In turn, the expected increase in annual gross revenue from wreckfish landings ranges from \$257 to \$65,457 per shareholder, or approximately \$26,603 on average. This increase in shareholders' gross revenue from wreckfish landings represents an increase of approximately 15.4 percent in gross revenue from all of their commercial fishing activities on average. Thus, NMFS expects this action to increase the profits of the seven active shareholders relative to the profits they would earn if the reverted shares were not redistributed. With respect to long-term economic benefits, the expected increase in the total value of shareholders' shares is approximately \$180,600. On a per shareholder basis, the increase in the value of each shareholder's shares ranges from \$249 to \$63,465, or approximately \$13,890 on average. These gains represent an increase in asset value or wealth rather than an increase in profits.

No person, including a corporation or other entity, may individually or collectively hold ITQ shares in excess of 49 percent of the total shares. If implemented, this share cap would prevent any one person, including a corporation or other entity, from holding the majority of wreckfish quota shares, and would not result in any of the 7 active shareholders exceeding the quota share cap. The maximum quota share held by a person,

including a corporation or other entity, as a result of the actions to define and revert inactive shares and redistribute those shares to remaining shareholders is 41.54 percent. Thus, no person, including a corporation or other entity, would exceed the 49 percent share cap and, in turn, no person, including a corporation or other entity, would possess excess shares that would be subject to further redistribution. As a result, no direct, adverse economic effects are expected and profits would not be reduced.

Because the RA would have sole authority with respect to reviewing, evaluating, and rendering final decisions on appeals, the cost to a shareholder for filing an appeal is expected to be minimal. Further, the set aside of 11,163 lb (5,074 kg) to resolve appeals is likely small enough relative to the total shares distributed to avoid creating any significant adverse economic effects on active shareholders.

As discussed above, this rule, if implemented, is not expected to have a significant direct adverse economic effect on the profits of the small entities impacted by this rule. For this reason, the Chief Counsel for Regulation certified that this rule would not have a significant economic impact on a substantial number of small entities. Thus, an initial regulatory flexibility analysis is not required and none has

been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains a collection-of-information requirement that has been approved under OMB control number 0648-0205, on May 24, 2011. Participants in the South Atlantic wreckfish ITQ program are required to identify the shareholders of the corporation and their percent of shares in the corporation in the Federal Wreckfish Permit Application Form, to allow NMFS to determine the share cap for the wreckfish ITQ program. NMFS requires this information upon renewal or transfer of a commercial vessel permit for wreckfish and within 30 days of when such changes occur.

Additionally, this proposed rule contains a new collection of information requirement that is subject to the PRA. Under this proposed rule, NMFS would implement a process to allow

participants in the South Atlantic wreckfish ITQ program to submit an appeal of ITQ landings information. Under this proposed rule, those participants would be required to submit documentation, including NMFS' logbooks or state landings records to support their appeal.

An application for this information collection requirement has been submitted to OMB for approval. The public reporting burden for this collection-of-information is estimated to average 2 hours per appellant. This estimate of the public reporting burden includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. NMFS seeks public comment regarding whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see

ADDRESSES) .

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and  
recordkeeping requirements, Virgin Islands.

Dated: March 26, 2012.

---

Alan D. Risenhoover, Acting Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is  
proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read  
as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.15, paragraph (a) is revised to read as  
follows:

§ 622.15 Wreckfish individual transferable quota (ITQ) system.

\* \* \* \* \*

(a) General--(1) Percentage shares-- (i) Initial ITQ

shares. In accordance with the procedure specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, percentage shares of the quota for wreckfish were assigned at the beginning of the program. Each person was notified by the RA of his or her percentage share and shareholder certificate number.

(ii) Reverted ITQ shares. Any shares determined by NMFS to be inactive, will be redistributed proportionately among remaining shareholders (subject to cap restrictions) based on shareholder landings history. Inactive shares are, for purposes of this section, those shares held by ITQ shareholders who have not reported any wreckfish landings between April 16, 2006, and January 14, 2011.

(iii) Percentage share set-aside to accommodate resolution of appeals. During the 2012-2013 fishing year, the RA will reserve 5 percent of wreckfish ITQ shares prior to redistributing shares (see paragraph (a)(1)(ii) of this section) to accommodate resolution of appeals, if necessary. NMFS will distribute any portion of the 5-percent share remaining after the appeals process as soon as possible among the remaining shareholders

(iv) Procedure for appealing wreckfish quota share status and landings information. Appeals must be submitted to the RA

postmarked no later than [date 90 days after the effective date of the final rule] and must contain documentation supporting the basis for the appeal. The only items subject to appeal are the status of wreckfish quota shares, as active or inactive and the accuracy of the amount of landings. The RA will review and evaluate all appeals, render final decisions on the appeals, and advise the appellant of the final decision. Appeals based on hardship factors will not be considered. The RA will determine the outcome of appeals based on NMFS' logbooks. If NMFS' logbooks are not available, the RA may use state landings records. Appellants must submit NMFS' logbooks or state landings records, as appropriate, to support their appeal.

(2) Share transfers. All or a portion of a person's percentage shares are transferrable. Transfer of shares must be reported on a form available from the RA. The RA will confirm, in writing, each transfer of shares. The effective date of each transfer is the confirmation date provided by the RA. NMFS charges a fee for each transfer of shares and calculates the amount in accordance with the procedures of the NOAA Finance Handbook. The handbook is available from the RA. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(3) ITQ share cap. No person, including a corporation or

other entity, may individually or collectively hold ITQ shares in excess of 49 percent of the total shares. For the purposes of considering the share cap, a corporation's total ITQ share is determined by adding the corporation's ITQ shares to any other ITQ shares the corporation owns in another corporation. If an individual ITQ shareholder is also a shareholder in a corporation that holds ITQ shares, an individual's total ITQ share is determined by adding the applicable ITQ shares held by the individual to the applicable ITQ shares equivalent to the corporate share the individual holds in a corporation. A corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when a change occurs. This information must also be provided to the RA any time a commercial vessel permit for wreckfish is renewed or transferred.

\* \* \* \* \*

[FR Doc. 2012-7604 Filed 03/29/2012 at 8:45 am; Publication Date: 03/30/2012]